

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.1129 OF 2018
IN
CRIMINAL APPEAL NO.917 OF 2018**

Santosh Jalindar Gaikwad & Ors. Applicants

versus

The State of Maharashtra ... Respondent

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- Mr.Rahul S. Kate, Advocate for the Applicants.
- Mrs.S.V. Sonawane, APP for the State/Respondent.

**CORAM : B. R. GAVAI &
SARANG V. KOTWAL, JJ.
DATE : 26th JULY, 2018.**

P.C. :

1. This is an Application for suspension of sentence and grant of bail during the pendency of the Appeal. All the Applicants have been convicted for the offence punishable under Section 4 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') r/w 34 and sentenced to suffer imprisonment for life.

2. Heard the learned Counsel Mr.Rahul Kate for the Applicants and Mrs.S.V. Sonawane, the learned APP for the State. The learned APP vehemently opposed the Application. She submits that the evidence of P.W.2 prosecutrix Maya Dinkar Kamble is cogent, trustworthy and reliable. She further submitted that her evidence is corroborated by the evidence of her father Dinkar Bajirao Kamble (P.W.3) and Sandip Krishnath Kumbhar (P.W.1).
3. We have perused the material placed on record. As held in the case of Niranjan Singh and another Vs Prabhakar Rajaram Kharote and others reported in (1980) 2 SCC 559 the detailed elaboration of evidence should be avoided at the stage of grant of bail.
4. Insofar as the case against the Applicants for the offence punishable u/s 4 of POCSO Act entirely rests on solitary testimony of the P.W.2 Maya Kamble. No doubt, the conviction can be passed on the testimony of solitary witness. However, the

requirement is that the evidence of such a witness must be found to be trustworthy, reliable and cogent.

5. The testimony of P.W.2 Maya would reveal that initially she had left the house and had gone to the house of P.W.1 Sandip Kumbhar. However, thereafter she was made to return to her house. When she was scolded by her parents, immediately thereafter she left the house on 10/11/2014. When she went to one temple she met the accused Nos.2 and 3 and they took her to their house. When she went to their house, she saw the accused No.1, the son of accused Nos.2 and 3. It is her version that accused No.1 himself informed the accused Nos.2 and 3, that it is not proper to keep the prosecutrix at her house. Thereafter she went along with the accused No.1 to the house of accused No.4. At the house of accused No.4 she states that the accused No.1 established sexual relations with her forcibly. She further stated that when she went to wash her clothes at the river, she was informed by one girl that the accused No.4 was not a good lady. Thereafter she telephoned Sandip Kumbhar and

called him. In her cross-examination she admitted that when she went along with accused Nos.1 and 2, she was required to change the mode of travel and at all those places, various persons including the police personnel were available there. Even when she went along with the accused No.1, at that time also she came across several persons including police. The reason given by her for not informing the police is that she was threatened in her house. As such according to her, the threats which were given to her, were not by the accused, but prior to her leaving the house.

6. We are prima facie of the view that the case would not be made out for an offence punishable u/s 4 of POCSO, insofar as the accused Nos.2, 3 and 4 are concerned. The evidence against the accused No.1 is the solitary testimony by P.W.2 prosecutrix. It is further to be noted, that even after the prosecutrix had left the house on 10/11/2014 her family members did not lodge police report till 19/11/2014.

7. As such, we are of the prima facie view that the Applicant No.1 has good case on merits. The Applicant No.1 has suffered imprisonment for a period of 2 years.

8. In that view of the matter, the Application is allowed. The order of sentence is suspended. The Applicants are directed to be released on bail on the same terms and conditions as were applicable during trial.

(SARANG V. KOTWAL, J.)

(B. R. GAVAI, J.)